

1
2 UNITED STATES DISTRICT COURT
3 DISTRICT OF NEW JERSEY
4 Civil Action No. 08-2946

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In Regard to the Matter of:

JOEL SCHNEIDER
U.S. Magistrate Judge

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

MICHAEL SHONTZ

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

TUESDAY, APRIL 14, 2009

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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1 JUDGE BISSELL: I'm now reopening
2 proceedings in the case of Michael Shontz, civil
3 action docket number 08-2946.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of
12 Mr. Shontz.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Michael Shontz was in Trailer Number
18 Three, C Wing on or about August 2, 1997, when he
19 alleges that certain events occurred to him.

20 On page 15 he talks about the first
21 assaults upon him after having been strip searched,
22 reclothed and then moving off the unit for, as best I
23 can recall, the opportunity to have that unit
24 searched.

25 The question then is asked beginning at

1 line 15 on page 15:

2 "Question: All right. What happened
3 after that?

4 "Answer: He started walking down the
5 wing, and I was punched in a stomach about three or
6 four times.

7 "Question: By who? By a guard, by an
8 inmate?

9 "Answer: By guards.

10 "Question: Now, were you inside or
11 outside of the trailer when that happened?

12 "Answer: I was still on the wing."

13 Later on cross-examination it was
14 developed that although these events occurred, they
15 really did not inflict anything in the nature of a
16 serious injury, according to him.

17 At pages 19 and 20 he testifies to
18 another event, namely, upon his return to the trailer
19 from the gym, there not having been any incidents in
20 that passage of time.

21 Beginning at page 19 at line three:

22 "Question: All right. And did there
23 come a point when you were actually walking back into
24 the trailer that you had some kind of encounter with
25 another guard?

1 "Answer: I was walking in the trailer
2 and an officer was coming out the door and bumped
3 into my shoulder like he meant to hit me, and then he
4 grabbed me by the head and took me inside and smacked
5 my head up against the wall three times:

6 "Question: Now, when he grabbed you by
7 the head, did he actually get his hands on the bones
8 of your head, or was he grabbing your hair?

9 "Answer: He grabbed my hair."

10 There is a little bit of talk about the
11 length of his hair. And then questions continue on
12 page 20.

13 "Question: And when he struck your
14 head against an object, what was it, a wall, a door,
15 what was it?

16 "Answer: I believe it was a wall. He
17 just grabbed it and just kept hitting me up against
18 the wall, and told me watch where you're going next
19 time.

20 Further examination revealed an
21 assertion that this was happening on the right side
22 of his head.

23 On cross-examination, however,
24 Mr. Shontz was confronted with his deposition and his
25 version is very different. At his deposition taken

1 on March 31, 2000, obviously several years earlier
2 than his testimony here in court, he said he was
3 assaulted in this fashion on the way out to the gym,
4 not on his return from the gym. He was very clear
5 about that in his deposition, but when confronted
6 with the discrepancy between his deposition and his
7 trial testimony, he then insisted that it still
8 happened on his way back from the gym. He even went
9 so far as to assert that the deposition transcript
10 was inaccurate or might have been inaccurate in its
11 description.

12 He was then confronted with his answers
13 to interrogatories which were marked Exhibit D-344.
14 And in response to question four, which is in this
15 case (as with many others) the one which calls for a
16 description of the events of any assaults.

17 And among the segments of his answer to
18 question four, and I quote beginning at line 22 at
19 the bottom of page 67: "And when I exited the wing
20 to the outside, the SOGs escorted me and had me walk
21 purposely head down into another SOG. The SOG yelled
22 at me, grabbed me by the hair on the right side and
23 slammed the left side of my head into the exterior
24 wall of the trailer."

25 And then colloquy ensues on page 68 in

1 which he continues to assert that no, it happened on
2 the way back from the gym. And the interrogatory
3 answers, although also under oath, are wrong.

4 The discrepancy is even heightened in
5 the interrogatory answers because apparently in
6 addition to being hit on the left side of the head
7 rather than the right, it now happened on the wall
8 outside of the trailer rather than on the inside, and
9 as I've already mentioned before, on his exiting the
10 trailer rather than his returning.

11 Given those significant discrepancies
12 in the evidence presented, it cannot be said,
13 frankly, that Mr. Shontz has established by a
14 preponderance of the evidence exactly what happened
15 to him on that occasion. And I searched the rest of
16 this record to determine whether there were any other
17 indicia of credibility that would perhaps make this
18 sort of discrepancy not particularly significant.
19 You know, people's memories change, so forth and so
20 on. Frankly, I didn't find it.

21 Furthermore, we have his recounting of
22 the condition of his cell when he returned to the
23 cell after the search of the unit and after their
24 stay in the gym. And he's asked at page 51 of his
25 transcript:

1 "All right. Now describe for me what
2 your area looked like when you got back.

3 "Answer: It looked like a bomb went
4 off, the whole wing.

5 "Question: How about your cubicle?

6 "Answer: Looked like a bomb went off.

7 "Question: Describe it for me.

8 "Answer: It was all messy, everything
9 was tore out of the lockers, all over the place.
10 Your stuff could be down there, his stuff could be
11 down there, your stuff wasn't in front of your place.
12 All of it out of the lockers and so forth.

13 This, however, is very effectively
14 refuted by the report of Ombudsman Silva, D-135,
15 which demonstrates, certainly to my satisfaction,
16 that the cells were not left in a totally trashed
17 condition. Indeed, among the things that the
18 ombudsmen were there to do was to observe to make
19 sure that conduct of this sort did not take place.
20 As in some other cases, I want to reiterate here that
21 there is nothing that's come to my attention which
22 would indicate that one, more or all of the ombudsmen
23 assigned to this lockdown would have done anything
24 other than taken their job seriously and
25 conscientiously. No indications that the ombudsmen,

1 either by themselves or in participation with others,
2 sought to whitewash the manner in which prisoners or
3 their property was treated.

4 Once again, the testimony with regard
5 to the so-called incident with the SOG officer at or
6 about the entrance of the unit, and the inability to
7 establish any credibility with regard to the
8 description of that event, also impacts him with
9 regard to his allocations of being punched in the
10 stomach on his way down the tier before exiting the
11 unit. I think it's not too far fetched to indicate
12 that he was touched, he might have been prodded, he
13 might have been pushed for the purpose of making sure
14 that he moved expeditiously and also as a bit of a
15 demonstration of authority and control by the
16 officers involved. But even the plaintiff indicates
17 that he wasn't injured by that alleged conduct in any
18 serious way. And I find under all the circumstances
19 that that conduct also is not actionable as cruel and
20 unusual punishment.

21 Finally, although not every item of
22 evidence has been discussed in this opinion/report,
23 all evidence presented to the Special Master was
24 reviewed and considered.

25 For the reasons set forth above, I

1 recommend in this report that the district court
2 enter an order and judgment of no cause for action
3 with regard to Michael Shontz.

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1 C E R T I F I C A T E
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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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Theresa O. Mastroianni

20 Theresa O. Mastroianni, C.S.R.
21 Notary Public, State of New Jersey
22 My Commission Expires May 5, 2010
23 Certificate No. X10857
24 Date: April 16, 2009

25